

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 01-AFC-22
)	
Application For Certification of the)	COMMISSION STAFF'S REPLY TO
San Joaquin Valley Energy Center)	APPLICANT'S OPPOSITION TO
)	REQUEST TO REOPEN THE
)	HEARING RECORD
_____)	

The Energy Commission Staff ("staff") offers the following responses and arguments in response to the Applicant's Opposition to Staff's Request to Reopen the Hearing Record filed by San Joaquin Valley Energy Center, LLC ("applicant").

The updated information presented by staff is necessary and relevant to a proper environmental review of this project. The Commission must examine the "whole" of a project, including its foreseeable direct and indirect consequences. It may not choose to analyze some foreseeable consequences and ignore others. The analysis is conducted based upon the best available information. It matters not whether the Commission has the jurisdiction to approve the reconductoring; it must analyze all of the foreseeable impacts of the project, including those under the jurisdiction of other agencies. As the lead agency for this project, it is incumbent upon the Commission to conduct a full and thorough environmental analysis.

The applicant argues that the Commission need not consider reconductoring impacts because they are the subject of a CEQA categorical exemption (Cal. Code Regs., tit., 14, § 15302(c)). Categorical exemptions do not apply, however, where the exempted activity is but a part of a larger project, as is the case here. Thus, while the Public Utilities Commission, when presented with a request to approve only the reconductoring, may be able to apply the exemption,¹ the Energy Commission may not ignore the reconductoring as exempt while it gives full analysis to the other aspects of a project. To do otherwise would result in an improper piecemealing or segmentation of the project. McQueen v. Board of Directors (1988) 202 Cal.App.3d 1136.

Though staff has not concluded there are any significant unmitigable impacts due to reconductoring or other system improvements necessary to allow the proposed project to operate, if any were found the Commission could decide to deny the application.

¹ Categorical exemptions are not absolute. Where potential significant impacts are found in a particular case, a categorical exemption may be inapplicable (Cal. Code Regs., tit., 14, § 15300.2).

Similarly, if it is clear that mitigation measures have been or can and should be imposed by another agency, the Commission may approve the project.²

Reopening the hearing record to receive this updated analysis need not significantly delay the decision in this matter. The Committee has set an expedited briefing schedule³ and can incorporate the new information either in the pending PMPD or in a revised PMPD.

The applicant attempts to dismiss the updated analysis as “speculative.” The information from PG&E and the California Independent System Operator identifying likely transmission lines requiring reconductoring is, as a result of the completion of a Facility Study by PG&E and further analysis by the Cal-ISO, more definitive than that originally provided in the FSA.

For all these reasons, the new information regarding reconductoring should be included in the record of this case.

DATED: December 3, 2003

Respectfully submitted,

PAUL A. KRAMER JR
Senior Staff Counsel

² Public Resources Code Section 21081. Staff’s inability to recommend approval of this project is based upon concerns about air quality offsets, not potential impacts from reconductoring.

³ Under Cal. Code Regs., tit., 20, §1716.5 the normal time for a response to a motion is 15 days. Here the Committee, exercising the discretion granted to it, shortened applicant’s response period to approximately 8 days.